

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Sections of the
Cable Television Consumer
Protection and Competition Act of 1992

Rate Regulation

MM Docket No. 92-266

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To: The Commission - Mail Stop 1170

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. These Reply Comments are filed by the Community Broadcasters Association ("CBA"), a trade association representing the interests of licensees and permittees of low power television (LPTV) stations throughout the nation.

2. CBA's initial comments noted the importance to the LPTV industry of the availability of reasonably priced leased channel access on cable television systems. LPTV stations often provide the only local programming oriented toward small markets which cannot economically support full power television service, including both smaller cities and towns and minority communities within larger cities. CBA noted that LPTV stations may be doomed to failure if not carried on cable, and they have sometimes been shut out altogether or faced with outrageous demands for amounts greater than the prices charged to other lessors of access channels.

3. Submitted herewith are copies of two affidavits, the originals of which were filed with the United States District

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Court for the District of Columbia in Turner Broadcasting System, Inc. v. FCC and consolidated actions, Civil Action Nos. 92-2247, 92-2202, and 92-2494. One affidavit recites how the only television service oriented toward the African-American community in Indianapolis, Indiana, was silenced when, notwithstanding support from top local and state political officials, the local cable operator^{1/} demanded a quarter million dollars a year for leased channel access. The second states that when a VHF LPTV station in Southern New Jersey, which provided local programming in a state that has historically attracted Congressional and FCC attention because of its dominance by stations in out-of-state markets and its lack of local VHF service, requested leased access, each cable system demanded over one million dollars a year.^{2/}

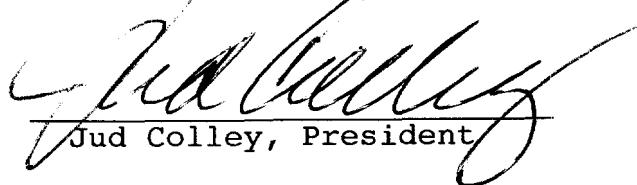
4. CBA's allegations of anticompetitive conduct by cable operators, in violation of the letter and spirit of Section 612 of the Communications Act, are not imagined. They are real, as

^{1/} The cable system was owned by a major MSO. As indicated in CBA's initial comments, MSO's tend to be the worst offenders in dealing with LPTV stations.

^{2/} The New Jersey LPTV station eventually secured access for a more manageable price, but the fact that the cable operators demanded over a million dollars the first time around still stands. Moreover, the ultimate price charged, with both a per-subscriber element and an element based on the LPTV station's gross revenues, is still excessive and is in no way related to costs. It is clearly designed to cripple a potentially competitive program service, as the affidavit states local cable managers admitted "off-the-record."

shown by the attached affidavits. Remedial regulatory action by the Commission is sorely needed.^{3/}

Respectfully submitted,
COMMUNITY BROADCASTERS ASSOCIATION



Jud Colley, President

February 11, 1993

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^{3/} Civil litigation by frustrated LPTV stations is not a viable alternative to regulatory action, because the cost of such litigation can easily bankrupt an LPTV station, and the station may not be able to survive for the duration of the lengthy litigation process. The Commission's statutory mandate is to protect the public interest; and it must fulfill that mandate, even if other possible legal remedies are available.

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Plaintiff,

Y.

Defendants.

**Civil Action No. 92-2247
(TJP, SWF, SS)**

AND CONSOLIDATED ACTIONS.

**Civil Action Nos.
92-2292, 92-2494,
92-2495, 92-2558
(TPJ, SWF, SS)**

STATE OF INDIANA)
) ss:
COUNTY OF MARION)

Lee Jackson, being duly sworn, deposes and states as follows:

1. Between October 1989 and December 1992, I co-owned and operated W11BV, better known as WFBM-TV, a low power television ("LPTV") station in Indianapolis.

2. WFBM-TV was a minority-owned television station which provided television programming for approximately 200,000 African Americans, who comprise about 25 percent of Indianapolis' population. Although WFBM-TV carried Channel America

programming for part of the day, the station specialized in local productions for the African American community. WFBM-TV broadcast local news, featuring a primarily all-black news staff, every weekday evening at 7 and 10 p.m.. In addition, WFBM-TV broadcast a talk show every weekday morning in which an African American woman interviewed local community leaders.

3. The African American community has traditionally been underserved by Indianapolis' full power television stations. During the two years that WFBM-TV was on the air, it covered issues and perspectives of interest to the African American community which had been largely ignored by full power television stations.

4. WFBM-TV was well received by the community. The station rapidly developed a significant viewing audience which extended beyond the African American community. Local newspapers carried WFBM-TV's program schedule.


5. Cable penetration in Indianapolis approaches 70 percent. There are two cable systems in the city. Shortly before WFBM-TV went on the air, I approached each cable system, requesting carriage of the station. Even though WFBM-TV was the only locally-owned television station in Indianapolis and the only television station serving the city's African American community, neither cable system would add WFBM-TV to its cable channels. Not even letters of support from the Mayor of Indianapolis, City Council members and the Governor's staff of Indiana persuaded these systems to change their minds. Nor did either system change its mind when the Governor chose to meet with 150 of Indiana's leading African American businessmen at WFBM-TV.

6. Finally, one of the cable systems, American Cable, which is owned by Time Warner Enterprises, offered to lease a channel to WFBM-TV for \$18,333 a month, or nearly a quarter of a million dollars a year, but only after American Cable had learned of a proposed sale to a company which could afford such payments. We simply could not afford such an arrangement.

7. Without cable carriage, WFBM-TV had great difficulty persuading local advertisers to buy time on the station. I firmly believe that the local cable systems refused to carry WFBM-TV because they competed with the station for the business of local advertisers.

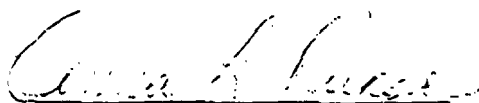
8. Unable to generate the advertising revenues necessary to cover its costs, WFBM-TV ceased broadcast of local programming in October, 1991. Thereafter, WFBM-TV simulcast the signal of the local CBS affiliate until the sale of the station to that affiliate in December, 1992. As a result, the African American community in Indianapolis was deprived of a vital source of local television programming.

9. Even if WFBM-TV had survived, it would not qualify for must carry status under the Cable Television Consumer Protection and Competition Act of 1992.



Lee Jackson

Sworn to before me this
14 th day of January, 1993



Notary Public

Union County

Commission Expires August 1993 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TURNER BROADCASTING SYSTEM, INC.,

Plaintiff,

v.

FEDERAL COMMUNICATIONS COMMISSION

et al.,

Defendants.

AND CONSOLIDATED ACTIONS.

Civil Action No.
92-2247
(TPJ, SWF, SS)

Civil Action Nos.
92-2292, 92-2494
(TPJ, SWF, SS)

AFFIDAVIT OF PAUL ENGLE

STATE OF NEW JERSEY)
) SS:
COUNTY OF ATLANTIC)

Paul V. Engle, being duly sworn, deposes and states as follows:

1. I am general manager of W08CC-TV Channel 8, a low power television ("LPTV") station located in Hammonton, New Jersey. Channel 8 is the first VHF station licensed to South Jersey and only the second VHF station licensed to New Jersey, the other is located in Secaucus.

2. Channel 8 began broadcasting on January 16, 1989. Although an LPTV station, Channel 8's signal reaches all of South Jersey and parts of Pennsylvania and also Wilmington, Delaware. Channel 8's signal is potentially available to over 3 million homes. It was the first new VHF station in the market since 1959.

3. Channel 8 began as "Sports 8," the first over-the-air all-sports television station in the country. We broadcast football and basketball games involving local college and high school teams, as well as professional and amateur hockey games. Later on, we added public affairs shows to our broadcast schedule. These shows typically focus on issues of interest to South Jersey. On one show, Ann A. Mullen, a state assemblywoman from South Jersey, discussed her proposed legislation on minimum wages for farmworkers, a topic of extreme importance to South Jersey, where there are a large number of farms. (I have attached a letter that Assemblywoman Mullen wrote to local cable systems following her appearance on Channel 8.)

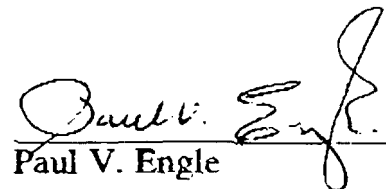
4. Since January 1989, I have tried to persuade the various cable systems serving South Jersey to carry Channel 8. In all but one case, I have been unsuccessful. I originally proposed a cross-promotional plan in which Channel 8 would aggressively promote subscription to cable television in return for cable carriage. This proposal was rejected by all of the cable systems in South Jersey.

5. In March 1990, I made a request for "leased access" for Channel 8 under Section 612 of the Cable Communications Policy Act of 1984, 47 U. S. C. §532. Each cable system quoted an annual rate exceeding one million dollars, which greatly exceeded Channel 8's potential annual income from sale of advertising

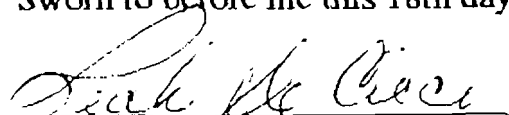
spots. One cable system subsequently lowered its proposed annual rate to a figure that amounted to five cents per subscriber per month and five percent of our annual gross revenue, which I reluctantly agreed to pay.

6. Although each system cited the lack of available channels or the duplicative nature of Channel 8's programming in rejecting my proposed cross-promotional plan, I have been told off-the-record by several cable executives that local cable systems do not want to carry Channel 8 because it competes with them for the business of local advertisers.

7. Without carriage by the majority of local cable systems Channel 8 continues to struggle. Cable penetration in South Jersey exceeds 70 percent. Without cable carriage, Channel 8 simply cannot reach its audience in South Jersey which makes it extremely difficult to sell time to local advertisers. Without cable carriage, daily newspapers will not list Channel 8 in their TV listings.


Paul V. Engle

Sworn to before me this 18th day of January of 1993.


Notary Public
My Comm. expires 12/5/93